

POWDER RIVER COUNTY
SHERIFF'S OFFICE

Box 200
Courthouse Square
Broadus, Montana 59317
Ph: 406-436-2333 FAX: 406-436-2866

CONCEALED WEAPONS
PERMIT APPLICATION

INFORMATION PACKAGE

Enclosed in this package are the guidelines for applying for a Concealed Weapons Permit; forms for application for a Concealed Weapons permit and all laws pertinent to carrying a Concealed Weapon.

45-8-315. Definition. "Concealed Weapon" means any weapon mentioned in 45-8-316 through 45-8-318 and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon.

Compiler's Comments

1991 Amendment: Near beginning, after "through", substituted "45-8-318 and 45-8-321 through 45-8-328 that is" for "45-8-319 which shall be" and after "the weapon" inserted "except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon"; and made minor changes in style.

Cross-References

Weapon defined, 45-2-101(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

- 45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing of a application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen 18 years of age or older who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:
- (a) is ineligible under Montana or federal law to own, possess, or receive a firearm;
 - (b) has been charged and is awaiting judgment in any state or federal crime that is punishable by incarceration for 1 year or more;
 - (c) subject to the provisions of subsection (6), has been convicted in any state or federal court of
 - (i) a crime punishable by more than 1 year of incarceration; or
 - (ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;
 - (d) has been convicted under 45-8-327 or 45-8-328, unless he has been pardoned or 5 years have elapsed since the date of the conviction;
 - (e) has a warrant of any state or the federal government out for his arrest;
 - (f) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;
 - (g) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or
 - (h) was dishonorably discharged from the United States Armed Forces.
- (2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon.
- (3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:
- (a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks, or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency; or

(d) possession of a license from another state to carry a firearm, concealed or otherwise that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c) or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course created a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible.

45-8-323. Denial of renewal -- revocation of permit. A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license.

45-8-324. Appeal. The denial or revocation of a permit to carry a concealed weapon or refusal of a renewal is subject to appeal to the district court, which may consider and determine facts as well as law and which is not bound by any factual, legal, or other determination of the sheriff, and from that court to the Montana supreme court. To the extent applicable, Title 25, chapter 33, governs the appeal.

45-8-325. Permittee change of county of residence - notification to sheriff and chief of police. A person with a permit to carry a concealed weapon who changes his county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of his change of residence and that he holds the permit. If his residence changes either from or to a city or town with a police force, he shall also inform the chief of police in each of those cities or towns that has a police force.

45-8-326. Immunity from liability. A sheriff, employee of a sheriff's office or county, is not liable for damages in a civil action by a person or entity claiming death, personal injury, or property damage arising from alleged wrongful or improper grant of, renewal of, or failure to revoke a permit to carry a concealed weapon, except for actions that constitute willful misconduct or gross negligence.

45-8-327. Carrying a concealed weapon while under the influence. A person commits the offense of carrying a concealed weapon while under the influence if he purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

45-8-328. Carrying concealed weapon in a prohibited place. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if he purposely or knowingly carries a concealed weapon in:

- (a) a building owned or leased by the federal, state, or local government;
- (b) a bank, credit union, savings and loan institution, or similar institution; or
- (i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or
- (ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

Cross-References

Offense defined, 45-2-101

Montana Code Annotated 2015

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45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

- (a) is ineligible under Montana or federal law to own, possess, or receive a firearm;
- (b) has been charged and is awaiting judgment in any state or federal crime that is punishable by incarceration for 1 year or more;
- (c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:
 - (i) a crime punishable by more than 1 year of incarceration; or
 - (ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;
- (d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;
- (e) has a warrant of any state or the federal government out for the applicant's arrest;
- (f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;
- (g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally disordered, or mentally disabled and is still subject to a disposition order of that court; or
- (h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally disordered, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

- (a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;
- (b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;
- (c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement

agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible.

History: En. Sec. 1, Ch. 759, L. 1991; amd. Sec. 1, Ch. 408, L. 1995; amd. Sec. 3, Ch. 581, L. 1999; amd. Sec. 7, Ch. 332, L. 2009; amd. Sec. 9, Ch. 161, L. 2015.

In this application for a Concealed Weapons Permit (CWP), there is a section that asks, "In complete detail, please explain your reasons for requesting this permit." A common answer to this question is that, the applying person believes, it is their constitutional right to carry a concealed weapon. This, however, is not the case. Since we have seen this answer on CWP applications numerous times, we realize that we need to educate the public on this issue.

On June 9, 2016, an eleven-judge panel of the Ninth U.S. Circuit Court of Appeals, ruled that Americans have no right to carry a concealed gun outside the home. In light of the absence of a right to do so, the court found no constitutional barrier to requiring a "good cause" to do so.

We have included an article in this application that addresses this issue and much more info on the matter can be found easily on the internet.

Appeals Court Upholds 'Concealed Carry' Restrictions

Federal court in California says Americans have no guaranteed right to carry concealed guns in public

By JOE PALAZZOLO

Updated June 9, 2016 5:11 p.m. ET

Americans have no Second Amendment right to carry concealed guns in public, a federal appeals court in California ruled on Thursday in a significant blow to gun-rights activists and gun owners in a large swath of the Western U.S.

The San Francisco-based Ninth U.S. Circuit Court of Appeals, in a 7-4 ruling, upheld a California law requiring residents to show "good cause" for carrying a concealed handgun.

RELATED

- Judges Grill Lawyers in California Gun Restrictions Case (June 16, 2015)
- California Gun Limits Face Court Challenge (June 15, 2015)
- Court Backs Concealed Guns (Feb. 13, 2014)
- Law Blog: Appeals Court Upholds N.Y. Concealed-Carry Law (Nov. 27, 2012)

Under the California law, personal safety alone doesn't qualify as good cause, which is defined by county sheriffs. The plaintiffs, gun owners seeking licenses to

carry their weapons concealed, said the policies in San Diego and Yolo counties where they live violated their Second Amendment rights.

"We hold that the Second Amendment does not preserve or protect a right of a member of the general public to carry concealed firearms in public," wrote Judge William A. Fletcher, an appointee of President Bill Clinton, for the seven-judge majority.

Lawmakers are free to enact "any prohibition or restriction a state may choose" on the carrying of concealed guns, Judge Fletcher said.

A Second Amendment right to carry a firearm openly in public may exist, but the Supreme Court hasn't answered that question, Judge Fletcher wrote.

In dissent, Judge Consuelo M. Callahan, appointed to the bench by President George W. Bush, said the Second Amendment demands individuals be permitted to carry a weapon in self-defense under the Second Amendment, either openly or concealed.

With some exceptions, California law bans people from carrying guns openly, she wrote. She was joined in her dissent by three colleagues.

Taken together, the concealed-carry policies and the open-carry ban "obliterate the Second Amendment's right to bear a firearm in some manner in public for self-defense," she wrote.

The Ninth Circuit encompasses Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. The ruling aligns the court with three other regional appeals courts that have upheld good-cause requirements: the Second, Third and Fourth circuits. The Chicago-based Seventh Circuit ruled in 2012 that the right to bear arms "implies a right to carry a loaded gun outside the home."

Many gun-law experts, Second Amendment scholars and others expect the law on concealed-carry outside the home ultimately will be settled by the U.S. Supreme Court. The court has so far turned away several opportunities to take up the issue.

The ruling Thursday comes on the heels of a May 16 ruling by the Ninth Circuit recognizing that the Second Amendment protects the right to buy and sell firearms, as well as the right to keep and bear them.

Thursday's ruling marked a reversal for the Ninth Circuit. In 2014, a three-judge panel of the court held that the Second Amendment "does require that the states permit some form of carry for self-defense outside the home."

But the Ninth Circuit voted to rehear the case, with more judges participating, upon the request of California Attorney General Kamala Harris. That rehearing before 11 judges led to Thursday's 7-4 ruling.

The plaintiffs in the case include Edward Peruta of San Diego County, who was denied a concealed-carry license in 2009 for failing to show good cause.

The county defines the term as "a set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm's way," according to an affidavit filed by a county official in the case.

Mr. Peruta, a spot-news videographer based in Connecticut, said he hoped the ruling would draw attention to the importance of the U.S. Supreme Court vacancy at stake in the presidential election, as well as future ones.

"This ruling could not have come at a better time," said Mr. Peruta, who described himself as a part-time resident of San Diego.

Ms. Harris said in an emailed statement that the ruling "ensures that local law enforcement leaders have the tools they need to protect public safety by determining who can carry loaded, concealed weapons in our communities."

Yolo County has no definition of good cause but offers applicants examples of who may have it, such as a victim of documented threats of violence or a business owner who carries large sums of cash or valuables.

The Ninth Circuit majority traced concealed-carry licenses to 1299 England, when King Edward I told his sheriffs to prohibit anyone from "going armed within the realm without the king's special licence." The court also cited restrictions on carrying concealed weapons that several American colonies adapted from English law centuries later. After the U.S. Civil War, at least five state constitutions explicitly stated that the right to carry concealed weapons could be prohibited by the legislature.

"The carrying of concealed weapons was consistently forbidden in England beginning in 1541; was consistently forbidden in the American colonies; and was consistently forbidden by the states," Judge Fletcher wrote.

Thursday's decision inspired dueling narratives from the country's largest gun advocacy groups, both of which filed briefs in the case.

Chris W. Cox, executive director of the National Rifle Association Institute for Legislative Action, said the ruling revealed the Ninth Circuit to be out of touch with mainstream Americans and could endanger Californians in counties with "hostile" sheriffs, he said.

"This decision will leave good people defenseless," he said.

Elizabeth Avore, legal director for Everytown for Gun Safety, called the ruling "a major victory for public safety" and praised the Ninth Circuit for moving in step with at least three other federal appeals courts.

"The decision is well within the legal mainstream," she said.

Website for the "Official Montana Firearms Safety Course"

www.concealedcarry-ed.com/montana/

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3. Receive your Montana permit.

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